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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 140904753-4801-01]

RIN 0648-BE34

Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Regulatory Amendment to Pacific Coast Groundfish Fisheries Trawl Rationalization Program for the Start of 2015

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would revise regulations for the Pacific Coast Groundfish fishery with a target implementation date of January 1, 2015. Final implementation of the 2015-2016 biennial harvest specifications and management measures will likely be delayed beyond January 1, 2015. NMFS has identified two issues that must be addressed prior to January 1, 2015, to prevent interruption of ongoing fisheries and to allow harvest of the total allowable groundfish catch. This action would address those issues by revising groundfish regulations in two ways. First, this action would replace language that was inadvertently deleted after a series of temporary rulemakings. This would reinstate a mechanism whereby NMFS can issue interim groundfish allocations at the beginning of the year, allowing the Pacific coast groundfish fishery to continue in years when annual groundfish harvest specifications are expiring and new ones are not yet finalized, as is likely for January 1, 2015. Second, this action would amend regulations to extend NMFS' authority to issue the full shorebased trawl allocation of groundfish to current

quota share holders in the Shorebased Individual Fishing Quota Program. Specifically, the rule would allow NMFS to issue that portion of the allowable catch currently allocated to an Adaptive Management Program (AMP), to quota share holders until final criteria and a process for distribution of the AMP quota shares is developed and implemented.

DATES: Submit comments on or before [insert date 30 days after date of publication in the Federal Register].

ADDRESSES: You may submit comments, identified by NOAA-NMFS-2014-0098, by any of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0098, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: William W. Stelle, Jr., Regional Administrator, West Coast Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115-0070, Attn: Miako Ushio.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Miako Ushio, phone: 206-526-4644; or e-mail: Miako.Ushio@noaa.gov.

SUPPLEMENTARY INFORMATION:

Electronic Access

This rule is accessible via the Internet at the Office of the Federal Register Web site at <https://www.federalregister.gov>. Background information and documents are available at the NMFS West Coast Region Web site at <http://www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html> and at the Council's Web site at <http://www.pcouncil.org>.

Background

The Pacific Coast Groundfish Fishery Management Plan (FMP) requires the Pacific Fishery Management Council (Council) to set harvest specifications and management measures for groundfish at least biennially. Council development of the 2015-2016 harvest specifications and management measures began in summer 2013 and culminated with a June 2014 recommendation for harvest specifications and associated management measures, with a target effective date of January 1, 2015. The effective date of these regulations will likely be delayed beyond January 1, 2015. In the event of a delay, NMFS has identified two issues that must be addressed to prevent interruption of ongoing fisheries and to allow harvest of the total allowable groundfish catch. Those two issues are addressed through this Proposed Rule.

Issuance of Groundfish Quota

In January 2011, NMFS implemented the Trawl Rationalization Program for the Pacific coast groundfish fishery's trawl fleet (75 FR 78344, December 15, 2010). This program included a provision to use a conservative estimate to issue Pacific whiting quota pounds (QP) at the

beginning of the year in years when harvest specifications of Pacific whiting are not known by January 1. The remainder of the quota pounds would be issued when the final harvest specifications are established. A similar provision for non-whiting groundfish species was added a year later (76 FR 74725, December 1, 2011).

In response to litigation, these provisions were amended via a temporary rule (77 FR 45508, August 1, 2012, extended via 78 FR 3848 through July 22, 2013). With the expiration of this temporary rule in 2013, the language allowing NMFS to use a conservative estimate for issuance of the non-whiting harvest QPs was inadvertently deleted. That provision is proposed to be reinstated through this proposed rule.

Extension of AMP Quota Pass-Through

As part of the Trawl Rationalization Program, NMFS created an Adaptive Management Program (AMP) (§ 660.140(d)(1)(ii)(A)) to address multiple purposes: community stability, processor stability, conservation, unintended/unforeseen consequences of the Trawl Rationalization Program, or to facilitate new entrants. The program reserved 10 percent of non-whiting quota share (QS) for these purposes. However, because the method for distributing the resulting QP from AMP QS has not yet been established, consistent with the program, NMFS has been issuing the QP to current QS holders in proportion to their non-whiting QS. For the first years of the program, this allocation policy was seen as a means to ease the transition of the QS fisheries into the Trawl Rationalization Program with the expectation that the trawl program would be modified to address changes in the fishery. Both the Council and NMFS have monitored this fishery, and have not identified any concerns related to communities, processors, conservation, or other matters that would need to be addressed now by the AMP quota.

The Pacific Fishery Management Council intends to conduct a formal 5-year review of the Trawl Rationalization program, as required under Magnuson Steven Act 303A(c)(1)(G). The pass-through mechanism is currently set to expire at the end of 2014, and this rule proposes, in accordance with the Council's recommendations from its March, 2014 meeting, to extend the pro rata pass-through until the implementation of appropriate regulations resulting from the 5-year review. NMFS is proposing to extend the pro rata pass-through so that the fish authorized for harvest through the biennial specifications process will continue to be available to benefit the fishing industry, dependent communities, and consumers. Without this rulemaking, 10 percent of the non-whiting QS would not be issued. Based on 2013 non-whiting groundfish revenues of \$28.2 million, this would result in a loss of approximately \$2.8 million to the shorebased trawl fleet.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act (MSA), the NMFS Assistant Administrator has preliminarily determined that this proposed rule is consistent with the PCGFMP, other provisions of the Magnuson-Stevens, Act, and other applicable law, subject to further consideration after public comment.

A draft Environmental Assessment (EA) was prepared for the pass-through of adaptive management quota pounds portion of this proposed action, and can be found on the NOAA Fisheries Groundfish Trawl Catch Share website at www.westcoast.fisheries.noaa.gov/fisheries/groundfish_catch_shares.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

This rule concerns the allocation of Quota shares via the AMP pass through provisions. Quota share holders are comprised of fishermen, processors, and non-profit organizations. As part of the 2014 QS application renewal process, quota share holders were asked if they considered themselves a “small” business based on a review of the Small Business Association (SBA) affiliation size criteria, including the \$19.0 million size standard for finfish fishing. The size standard for finfish fishing has recently changed. On June 12, 2014, the SBA issued an interim final rule revising the small business size standards for several industries effective July 14, 2014. 79 FR 33467 (June 12, 2014). The rule increased the size standard from \$19.0 to \$20.5 million for finfish fishing, from \$5 to \$5.5 million for shellfish fishing, and from \$7.0 million to \$7.5 million for other marine fishing, for-hire businesses, and marinas. A small organization is any nonprofit enterprise that is independently owned and operated and is not dominant in its field. For those finfish companies that reported themselves as “large” under the \$19.0 million standard, NMFS has reviewed available data on ownership, affiliation, industry websites, and recent analysis (NMFS-Alaska Region). NMFS did not find any information that would change their status under the new finfish standard. Based on this analysis, NMFS estimates that the 138 quota share accounts are held by 99 entities, of which 87 are small entities.

This rule would not result in any immediate impacts on revenues or costs for the small entities because it maintains the current AMP pass-through processes used in this fishery since 2011. This rule making does not contain any new management measures that would have specific economic impacts on the fishery. Therefore, this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared. NMFS will

conduct the appropriate analyses for any subsequent rulemakings stemming from this proposed rule.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: October 2, 2014

Samuel D. Rauch III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

PART 660 – FISHERIES OFF WEST COAST STATES

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 et seq. and 16 U.S.C. 773 et seq.

2. In § 660.140, revise paragraphs (d)(1)(ii)(A) introductory text, (d)(1)(ii)(A)(1) and (2), (d)(1)(ii)(B)(1) and (2), and paragraph (1)(2) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(d) * * *

(1) * * *

(ii) * * *

(A) Non-whiting QP annual sub-allocations. NMFS will issue QP for IFQ species other than Pacific whiting and Pacific halibut annually by multiplying the QS permit owner's QS for each such IFQ species by that year's shorebased trawl allocation for that IFQ species. Deposits to QS accounts for IFQ species other than Pacific whiting and Pacific halibut will be made on or about January 1 each year. Until the implementation of any regulatory changes developed pursuant to the first program review for the trawl rationalization program, the resulting AMP QP will be issued to all QS permit owners in proportion to their non-whiting QS.

(1) In years where the groundfish harvest specifications are known by January 1, deposits to QS accounts for IFQ species will be made on or about January 1.

(2) In years where the groundfish harvest specifications are not known by January 1, NMFS will issue QP in two parts. On or about January 1, NMFS will deposit QP based on the shorebased trawl allocation multiplied by the lower end of the range of potential harvest specifications for that year. After the final harvest specifications are established later in the year, NMFS will deposit additional QP to the QS account.

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(B) * * *

(1) In years where the Pacific whiting harvest specification is known by January 1, deposits to QS accounts for Pacific whiting will be made on or about January 1.

(2) In years where the Pacific whiting harvest specification is not known by January 1, NMFS will issue Pacific whiting QP in two parts. On or about January 1, NMFS will deposit Pacific whiting QP based on the shorebased trawl allocation multiplied by the lower end of the range of potential harvest specifications for Pacific whiting for that year. After the final Pacific whiting harvest specifications are established later in the year, NMFS will deposit additional QP to QS accounts.

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(1) * * *

(2) AMP QP pass through. The 10 percent of non-whiting QS will be reserved for the AMP, but the resulting AMP QP will be issued to all QS permit owners in proportion to their non-whiting QS until the implementation of any regulatory changes developed pursuant to the first program review for the trawl rationalization program.

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